



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

January 15, 2008

Representative James Phinizy, Chairman
Environment and Agriculture Committee
Legislative Office Building, Room 303
Concord, NH 03301

SUBJECT: HB 1538, relative to mineral extraction, mining, and reclamation in NH

Dear Chairman Phinizy and Members of the Committee:

Thank you for the opportunity to testify in support of HB 1538-FN, which is a comprehensive revision of RSA Chapter 12-E, the State's mining and reclamation statute. The Department of Environmental Services (DES) requested that this legislation be introduced, and we have been working closely with the Department of Resources and Economic Development (DRED) to propose language that will balance and protect New Hampshire's economic and environmental interests. HB 1538-FN, as introduced, is a bill that both DES and DRED support. However, we have amendments to offer to the Committee that we believe will improve the bill.

Current Provisions

Enacted in 1979 and last amended in 1992, RSA chapter 12-E regulates the practices of mining and reclamation activities related to the removal of minerals and dimension stone at New Hampshire quarry sites. (The excavation of sand, gravel, soil, and construction aggregate are regulated by a different law, RSA 155-E.) RSA 12-E designates the Commissioner of DRED as the primary authority to implement its requirements. The chapter describes the circumstances for which a prospecting permit or mining permit is required and delineates the information required to formulate a decision for both. Duties of the operator are defined for a permitted site relative to mining and reclamation. Opportunities for public participation are provided by RSA 12-E:5.

Performance bonds are required to ensure that an adequate reclamation effort is undertaken by an operator following cessation of the mining operation (and in some cases, the prospecting effort). These bonds are based on cost estimates as they existed in the 1970s to 1980s and have not been updated. Fees were established to support processing of the application and other activities related to administration of the chapter.

Enforcement and appeals provisions are included in the law to guide the Commissioner of DRED in resolving conflicts and legal challenges arising from mining or prospecting operations. However, the administrative rules designed to implement the law expired in 1980.

HB 1538-FN as introduced – Proposed Changes

A number of important changes have been developed in an effort to update RSA 12-E to current regulatory, financial, and environmental standards. HB 1538-FN as introduced reflects changes in the law proposed to establish a more collaborative process between DRED and DES for evaluating mining and prospecting applications to ensure that all applicable DES permits are secured in a timely manner, to require sufficient funds be accumulated to properly reclaim and remediate a former prospecting or mining site, and to ensure that such sites are cleaned up in accordance with current environmental standards and closed in a condition conducive to future re-use.

Some of the specific changes are as follows. Several definitions are rewritten, expanded, or added to clarify the law. For example, the definitions of “rock,” “runoff,” and “wetlands” are added. The definition of, and provision for, a mandatory “pre-application meeting” is added to institutionalize the need to convene a forum among all interested parties to discuss the proposal early in the application process. The value of this meeting would include identifying other interested parties who should participate in the discussion, site limitations in need of resolution, infrastructure limits, operational constraints, legal interpretations, financial considerations, and other matters affecting the permitting, operation, cleanup or closure of the site and its reuse. DRED, DES, and the local planning board representative (or his/her designee) are required to meet with the applicant at this opening discussion.

Primary authority for administering the resource-extraction portion of this chapter would remain with the Commissioner of DRED, but in recognition of the fact that DES was established by the Legislature in 1987, the role of the Commissioner of DES has been inserted to address and enforce the various environmental permits and other requirements typically associated with prospecting or mining activities (*e.g.*, wetland impacts, storm water management, terrain alteration, and shoreland protection). It is proposed that the prospecting and mining applications be simultaneously submitted to both DRED and DES for evaluation. The Department of Safety was added to the review team to evaluate the adequacy of a blasting plan for the prospecting or mining operation. From a resource inventory perspective, the New Hampshire Geological Survey (a unit of the DES Commissioner’s Office) will be copied on the operator’s report that documents the volume/tonnage and types of geologic materials removed by the prospecting or mining operation.

This more collaborative approach has been proposed to ensure that prospecting or mining operators obtain all of the necessary permits to protect human health and the environment, and are not allowed to prematurely abandon a permitted site without first assessing, remediating, and closing the site in accordance with all applicable federal, state, and local requirements and standards. Such activities may include, but not be limited to, the removal and cleanup of waste piles, lagoons, pipes, pools, tunnels, *etc.* It

may also include closure and long-term monitoring activities such as re-grading, re-vegetation, installation of groundwater monitoring wells, and the creation and implementation of a long-term sampling and analysis plan.

To further ensure that a site is properly developed, operated and closed, insurance coverage required by the applicant for mining and reclamation operations has been increased to a level of not less than \$1 million for personal injury and \$2 million for property damage protection (including that from blasting activities). The adequacy standards for financial assurance are updated to reflect actual costs of operation, remediation, closure, and reclamation of a contemporary prospecting or mining site, with a clause calling for adjustments to be made to the reclamation plan's funding level every three years, or at such times as the permit/plans are amended or otherwise modified. The financial assurance in no case may be less than \$10,000 per acre of the permitted site, and must be sufficient, valid, and enforceable for the life of the permit. Financial assurance is proposed to equal at least 110 percent of the costs of reclamation, including clean up of waste piles, lagoons, and long-term monitoring.

A provision is added that calls for the Department of Justice to conduct a background investigation of the performance history and criminal record of the applicant and of its officers and directors, with a report to DRED. The penalty for violations of the provisions of RSA 12-E is increased from \$10,000 to \$20,000 per violation.

Since HB 1538-FN was introduced, DES has consulted further with DRED, the Attorney General's Office and the Governor's Office on the proposed text of the bill. The Attorney General's Office has proposed a number of changes, including the addition of a provision that would authorize the issuance of an injunction by the superior court to prevent violations of the law. Consistent with the Governor's instructions, DES requests that HB 1538-FN be amended to delete Section 16 so that the current permit fee schedule in RSA 12-E:8 is retained until it can be reviewed as part of the next budget cycle.

Summary

With the prospect of increased demand for dimension stone for roads and buildings and the national strategic need for precious minerals in even trace amounts, the likelihood that New Hampshire could face increased prospecting and mining activity in the near future suggests that RSA 12-E, not significantly revised since its enactment in 1979, is in need of targeted revision. HB 1538-FN seeks to update the mining statute, its standards, its collaborative method for processing applications and enforcing its provisions, and the legal framework and financial assurance needed to concurrently enable the responsible extraction of natural resources, while supporting the state's economy and protecting public health and the environment.

The Department of Environmental Services supports the passage of HB 1538-FN and would be pleased to work with the Committee, or a subcommittee, to provide additional

information. If you have any questions regarding this letter of testimony, please contact Assistant Commissioner Michael Walls at 271-8806 or me at 271-2958.

Sincerely,

A handwritten signature in black ink that reads "Thomas Burack". A large, semi-transparent red "COPY" watermark is overlaid across the signature.

Thomas Burack
Commissioner

cc: HB 1538-FN Sponsors
Michael J. Walls, Assistant Commissioner